



U.S. Department of Justice

Office of Information and Privacy

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Washington, D.C. 20530

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MEMORANDUM FOR AGENCY CHIEF FOIA OFFICERS

FROM: Melanie Ann Pustay *Melanie Ann Pustay*
Director

SUBJECT: Guidance on Submitting Certification of Agency Compliance with FOIA's
Reading Room Requirements

This memorandum provides guidance for providing certification to the Department of Justice and OMB by October 31, 2008 that your agency's FOIA Reading Room is in compliance with the FOIA. All agency Chief FOIA Officers must provide this certification.

BACKGROUND

On May 30, 2008, the Attorney General issued his third Report to the President pursuant to Executive Order 13,392. This Attorney General Report is based on the Fiscal Year 2007 Annual FOIA Reports that agencies submitted earlier this year and provides an update on the agencies implementation of the FOIA and of their FOIA Improvement Plans. In accordance with Section 4(a) of the Executive Order, the Attorney General's Report includes recommendations for improving agency FOIA administration. The third recommendation requires each agency Chief FOIA Officer to conduct a review of their agency's FOIA Reading Room(s); to address any deficiencies in its content; and then to certify to the Department of Justice and OMB that its Reading Room is in compliance with the requirements of the FOIA.

As described in the Attorney General's Report, the Department of Justice has been actively engaged in a series of steps focused on the issue of FOIA Reading Rooms. In particular, the Department has added the topic of FOIA Reading Rooms to many of its training programs so that agency personnel are fully apprised of the requirements imposed by the FOIA for posting documents. In addition, as the Report points out, the Department of Justice has launched an initiative to reach out to those agencies that it has identified as having Reading Rooms in need of improvement. These outreach efforts will be an on-going process as agencies work to improve both their Reading Rooms and their websites overall.

READING ROOM REQUIREMENTS

Under subsection (a)(2) of the FOIA, federal agencies must make four distinct categories of records affirmatively available for "public inspection and copying." Agencies must satisfy this "Reading Room" provision of the FOIA by providing the designated documents either solely in electronic Reading Rooms on agency websites, or in a combination of electronic and conventional "paper" Reading Rooms. Agencies should be mindful that the Reading Room

provision of the FOIA imposes an affirmative disclosure requirement and, as such, agencies are obligated to not only maintain, but also to continuously update, each of the four categories of Reading Room records.

A. Description of Reading Room Records

As noted above, agency Reading Rooms must contain four distinct categories of records. Agencies should organize the records in a way that allows for efficient and easy location of specific documents. This may be accomplished by physically separating the records, in the case of conventional reading rooms, or by listing the records under separate links or headings, in the case of electronic Reading Rooms. One approach is to separate the records by the four categories listed in the statute. Agencies are free to separate and organize the records in any other manner that the agency determines, from a citizen-centered perspective, will best serve the needs of the community of individuals and entities that visit and use the agency's website.

The four categories of Reading Room records are:

1. "final opinions [and] . . . orders" made in the adjudication of cases;
2. specific agency policy statements;
3. "administrative staff manuals and instructions to staff that affect a member of the public"; and
4. records disclosed in response to a FOIA request that "the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records."

Additionally, agencies should note that records which are published and offered for sale by an agency are excluded from the definition of Reading Room records. Thus, even if a particular record would otherwise be designated a Reading Room record, if it is published and offered for sale it need not be included in the agency's Reading Room. Similarly, records published under the provisions of (a)(1) – the Federal Register requirement for publishing basic information about the organization of the agency – are excluded from the definition of Reading Room records.

B. Reading Room Indices

Agencies should index or otherwise organize the records to facilitate their location in the Reading Room. The index requirement is met by any organizational system which substantially enables a member of the public to locate desired materials in the Reading Room. The FOIA specifically requires that agencies provide a "general index" of those records falling into the fourth Reading Room category above (also known as the "frequently requested records" category). Because, as noted below, all "frequently requested" records must be posted in

electronic, rather than conventional, Reading Rooms, this indexing requirement may be satisfied by simply providing a distinct "link" to each document in this category.

C. Electronic Reading Rooms

Agencies must make the records created by them on or after November 1, 1996 in all four Reading Room categories available to the public by "electronic means." Agencies accomplish this electronic availability through the use of electronic Reading Rooms on their FOIA websites. Because the "frequently requested records" category of Reading Room records was not effective until March 31, 1997, this category of records is, as a practical matter, always included in electronic Reading Rooms.

For records created by an agency before November 1, 1996, agencies may continue to maintain conventional Reading Rooms, where paper copies of all subsection (a)(2) documents are available for inspection and copying. The location of each agency's conventional Reading Room should be indicated on its FOIA Web page. For those agencies which no longer maintain conventional Reading Rooms, a computer terminal through which a member of the public may, upon request, access the agency's electronic Reading Room must be provided. In such instances, instructions for using this arrangement should be provided on the agency's FOIA website.

For additional information see Office of Management and Budget Memorandum for Heads of Executive Departments and Agencies Concerning Policies for Federal Agency Public Websites (Dec. 17, 2004); Office of Management and Budget Memorandum for Heads of Executive Departments and Agencies Concerning Improving Public Access to and Dissemination of Government Information and Using the Federal Enterprise Architecture Data Reference Model (Dec. 16, 2005).

REPORTING REQUIREMENTS FOR CERTIFICATION OF AGENCY READING ROOMS

A. Timing of the FOIA Reading Room Certification

In order to appropriately ensure that agency certifications incorporate the components detailed below, each agency must submit a draft of their FOIA Reading Room Certification to the Department of Justice for review by October 17, 2008.

Each agency Chief FOIA Officer must then submit a finalized FOIA Reading Room Certification by October 31, 2008, to both the Department of Justice and OMB. Each agency must also post their FOIA Reading Room Certification on its FOIA website.

B. Preparing the FOIA Reading Room Certification

As noted above, each agency Chief FOIA Officer must conduct an internal review of its agency's FOIA Reading Room(s), address any deficiencies identified, and certify that those Reading Rooms are in compliance with the FOIA. In order to comply with this requirement all agencies should follow the procedure set out below.

1. General Issues

FOIA Reading Rooms are a required element for all agency FOIA websites. For any agency that fulfills its Reading Room requirement by maintaining multiple Reading Rooms, all such Reading Rooms should be reviewed, any deficiencies addressed, and the certification should identify each Reading Room that was reviewed.

A "deficiency" in the content of a Reading Room means any failure to comply with the statutory requirements for the establishment and maintenance of a FOIA Reading Room.

2. Template for Certification of FOIA Reading Rooms

Each agency Chief FOIA Officer must complete the following template for providing certification for his/her agency.

a. Internal Review of Agency FOIA Reading Room

Provide a statement that your agency FOIA Reading Room was reviewed for purposes of determining whether it was in compliance with the legal requirements for FOIA Reading Rooms. If your agency has more than one Reading Room, identify each Reading Room that was reviewed.

b. Any Reading Room Deficiencies Addressed

Provide, if applicable, a general description of the nature of any deficiencies located during the review of the Reading Room and the corrective steps taken to address them.

c. Certification

Provide a certification that after review and the remedying of any deficiencies, the agency's Reading Room is in compliance with the requirements of the FOIA.

C. Submitting the Reading Room Certification

Each agency's Reading Room Certification must be made by the agency's Chief FOIA Officer.

1. Guidelines for Submitting

By October 17, 2008, submit the draft Reading Room Certification for review by e-mail to DOJ.OIP.FOIA@usdoj.gov.

By October 31, 2008, submit the final, cleared Reading Room Certification to OMB at FOIAreporting@omb.eop.gov and to the Department of Justice at the e-mail noted above.

2. Contacts

Agencies with questions regarding this matter should contact Vanessa Brinkmann at the Department of Justice's Office of Information and Privacy at (202) 514-3642.